

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION (WORCESTER)**

**MICHAEL DAWE**

**Plaintiff,**

**V.**

**CAPITAL ONE BANK**

**Defendant.**

**CASE NO. 04-40192 FDS**

**CAPITAL ONE BANK'S AFFIDAVIT OF COUNSEL IN  
SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Bruce D. Berns, do hereby depose and state under oath as follows:

1. I am counsel of record for defendant Capital One Bank ("Capital One"). I am a member in good standing of the Bar of the Commonwealth of Massachusetts.

2. Attached hereto as Exhibit A is a true and accurate copies of the motion to dismiss the Worcester District Court action entitled *Capital One Bank v. Michael J. Dawe*, Docket No. 200262CV002639 (the "State Court Action") and the Court's notation of allowance on the first page thereof, which were retrieved from the Worcester District Court.

3. Attached hereto as Exhibit B is a true and accurate copy of Plaintiff's Responses to Defendant's Second Request for Admissions.

4. Attached hereto in Exhibit C is a true and accurate copy of an Acceptance Certificate obtained from the records of Capital One, a copy of which was produced by Capital One in this case. On information and belief, the Certificate was signed by the plaintiff Michael Dawe.

5. Attached hereto as Exhibit D is a true and accurate copy of the docket of the State Court Action.

6. Attached hereto as Exhibit E is a true and accurate copy of a Motion to Dismiss Counterclaim which was retrieved from the Worcester District Court.

7. Attached hereto as Exhibit F are true and accurate copies of the letters referred to in paragraphs 19 and 20 of the Complaint and attached thereto.

8. Attached hereto as Exhibit G is a true and accurate copy of the letter referred to in paragraph 17 of the Complaint and attached thereto.

Signed under the pains and penalties of perjury this 19<sup>th</sup> day of December 2005.

/s/ Bruce D. Berns  
Bruce D. Berns (BBO# 551010)  
Abendroth Berns & Warner LLC  
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